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ATG Interviews Jonathan Tasini

About Libraries, Publishers, Writers and Electronic Rights

by **Ron Chepesiuk** (Head of Special Collections, Dacus Library, Winthrop University,
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On September 24, 1999, the **Second Court of Appeals** made a ruling that will have profound impact on copyright in the cyber age. The court of appeals reversed a 1997 federal district court decision against the plaintiffs in *Tasini versus The New York Times*, ruling that the reuse of freelance work in databases and CD-ROMs without the author's express permission constitutes copyright infringement. In addition to *The New York Times*, other defendants in the lawsuit include **Time Inc.**, **Time Mirror Company's Newsday** newspaper, and **Mead Data Corporation**, which owned **Lexis-Nexis** before selling it to **Reed-Elsevier** in 1994.

The decision was a major victory for freelance writers. The district court judge had ruled that certain kinds of electronic databases amount to nothing more than a revision, but the judges in the appeal rejected that legal interpretation, ruling that even when there is no contact relating to electronic rights, a print publisher may not put the writings of freelancers on databases, such as **Academic Universe**, and CD-ROMs that include the entire textual content of the print publication. To understand the issues involved in this landmark lawsuit over electronic rights, **ATG** talked with **Jonathan Tasini**, lead plaintiff in *Tasini versus The New York Times*.

As an expert on labor issues, **Tasini** has been President of **UAW Local 1981** (better known as the **National Writer's Union**) since 1990. A freelance writer for fifteen years, **Tasini's** articles have appeared in many national newspapers, including *The Nation*, *The Village Voice*, *The Los Angeles Times*, *The Wall Street Journal*, and, of course, *The New York Times*. He is also the author of several monographs, including the recently published *They Get Cake. We Get Crumbs. The Real Story Behind Today's Unfair Economy* (Preamble Center). **Tasini** currently serves on the **National Research Council's Computer Science and Telecommunications Board**, which is studying copyright and the emerging information infrastructure.

ATG: Where is Tasini versus New York Times now?

JT: The other side has made a motion for a rehearing of the case before the full appeal's court. We are now waiting to see if the appeals court will hear it, but we aren't worried about the motion at all.

ATG: Why not?

JT: The Appeals Court made an unanimous ruling in our appeal. It was so one-sided and clear. Besides, the Chief Justice of the entire Appeals Court was on the judicial panel that made the decision. The chance of the full appeals court reversing a decision written by a Chief Justice is zero to nil.

ATG: How long before the full hearing will take place?

JT: It could be tomorrow or it could be six months. We really don't know. If the court decides it doesn't want to hear it, the appeal will go back to the lower court, where it will become a trial for damages.

ATG: What are we talking about in terms of damages?

JT: I don't want to speculate at this point.

ATG: Was it devastating to lose the first time?

JT: No, for two reasons. First, we did get partial victory. The court decision the first time around was very clear. We had not signed away our rights either orally or in writing. Had we lost that argument, then the decision would have been much harder to overturn because that had to do with facts, and an appeals court is supposed to defer to a lower court on the issue of factual determination. But because the judge's ruling turned on a crazy interpretation of the law, I felt very confident that we could overturn the initial decision, and that is why we went forward and appealed. Secondly, the suit is only one tool that writers have to use to get justice. As writers, we can never forget that.

ATG: You said "one tool." What other tools do writers have at their disposal?

JT: Most importantly, writers must build a strong union. That's the crux. I've said it a hundred times: we will never get justice through the legal system. We will never get ultimate power through the le-

gal system. The only way we can get the power we need to survive is through a strong union.

The legal system can give us some hammers and some leverage, but we can't stand around and wait for justice. Our win the second time around won't change the world. We can only do that by organizing.

ATG: Your point of view seems so straight forward and all-American—writers in a capitalistic society wanting to get paid fairly for their labor. Yet you and your associates have been stonewalled by the corporate world. How do you explain that?

JT: It's just greed. In some ways the legalities of our lawsuit are complex, but the bottom line isn't. They do not want to pay us money because they want to keep as much of it as possible for themselves. Their position is as old as the written word. So we have to fight to tear away from them some of that money that is legally ours. That's also as old as the written word.

ATG: So why should librarians care whether freelance writers get their fair share of royalties?

JT: Writers are readers who have an incredible role to play in education and the well-being of libraries. Librarians should want writers to thrive. If we thrive and can make a decent living at writing, then we can create more works. Libraries, after all, are about giving as much information as they can to their patrons. If writers don't survive, then libraries won't have information to give to their patrons. Also, if writers don't have control over copyright, that will mean that the corporate media companies will control all the information and own all the copyright. That will give them even more power, which they can impose on libraries and other institutions. That means higher costs and more control over information. I don't think libraries want that. Librarians should realize that they have common cause with writers in making information as accessible as possible.

ATG: Have you talked with librarians about the issues involved in Tasini versus The New York Times?

JT: The **National Writers Union**

continued on page 44

(NWU) has worked closely with the two main library groups—ALA and ACRL. **ATG** should note that the NWU, alone among author groups, has supported the **Digital Future Coalition** and has stood with the library profession in opposition to the database treaties that the publishing industry is trying to ram through Congress. We are doing it because the Union believes it has a responsibility to take the position that information should not be locked down and under the control of corporate interests. So our solidarity with libraries, I would guess, has gained us some respect in the library community and some sympathy for our cause.

ATG: You have called publishers “lawbreakers.” Are librarians “lawbreakers,” too? They are part of the equation. They use the material that publishers are selling and they are not helping writers recoup the royalties they believe is owed to them.

JT: That’s true, but I don’t think librarians have tried to rip us off in terms of the royalties. Actually, I believe most librarians have a lot of sympathy for us. I think they are caught in between the publishers, who are trying to take all the money being made from electronic rights, and the writers, who simply want their fair share. Our goal in pursuing the lawsuit is not to put librarians on the spot, but simply to make those people who make money from freelance writers pay them their fair share.

ATG: Will your suit impact on microforms?

JT: We are really targeting the commercial arena and cyberspace rights. So microforms is not something we are obsessed about.

ATG: Will the issue of microfilm ever be a part of a lawsuit involving the NWU?

JT: No, I feel confident in saying that we are not planning to seek remuneration from microform use. I want to make that clear. It’s not that microforms aren’t germane to our interests. It’s just that right now we are looking at the more commercial aspects of publishing.

ATG: Will your lawsuit and the issues involved have any impact on the delivery of electronic information by and between libraries?

JT: It would be unfortunate if the publishers try to make up the money they have to give to writers by raising, say, the

price of periodical subscriptions. That would be unfortunate, but I don’t think it will happen.

ATG: Is there a place for fair use?

JT: Of course, we are big supporters of fair use, so we are not raising the issue of fair use in our lawsuit. Again, all we are saying is that, if someone is making money from our writing, then we should get our fair share. Publishers and database providers have been shouting about copyright, but the decision in *Tasini versus The New York Times* has branded them copyright pirates.

ATG: What do you think of what **CARL** has done—photocopying articles for delivery to library patrons. Is **CARL** a target, too?

JT: There is a lawsuit right now in the courts. It’s called *Ryan versus the CARL Corporation*. That’s in the ninth circuit. We chose a few defendants to be included in the lawsuit, but those who weren’t named should beware. That’s all I’m going to say at this time.

ATG: You have appealed to publishers to get together with your side to resolve the dispute. What kind of response have you gotten?

JT: Not a strong one. We are still trying to put out feelers and get the other side to think about working together. All I’ll say is that the other side is going to need a little more encouragement.

ATG: So what’s it going to take to persuade them to consider getting together with your side?

JT: Pleasant letters and appeals to conscience aren’t going to work, so we’ve got some other things planned.

ATG: Can you talk about them?

JT: I can say at this point that we have a lot of options. Although we would rather sit down and negotiate a fair solution than to continue in litigation, we are prepared to pursue some of them.

ATG: So how long will the suit go on before we have closure? Months? Years?

JT: Hard to tell. I really have no idea. But our main objective—to get paid fairly—will always be a never ending fight because the other side is going to always find ways to screw us.

ATG: But what will you have won? Publishers are now getting writers to sign all-rights contracts. Will writers really have any more leverage?

JT: As I have said the fight won’t be an easy one to win. When we are through with *Tasini versus The New York Times*, there will be another battle. Our struggle has to be seen in the context of a battle for justice that’s going to take us into eternity.

ATG: Publishers Rights Clearinghouse, which is operated by the National Writers Union, is central to your position. Can you explain what it involves?

JT: If librarians can understand **ASCAP** or any simple licensing agreement, they can understand the **Clearinghouse**. Every time a song is played on the radio, a songwriter makes some money. That’s what the **Clearinghouse** does for writers. When the work of a freelance writer is included in a database, delivered for a fee via fax or photocopied into a so called “reader” for use in a classroom, the **Clearinghouse** helps get the royalties to the freelance writer.

ATG: What has been the response of the publishing industry to the Publishers Rights Clearinghouse?

JT: It hasn’t been a warm one. It’s really all about power. It means that publishers will have to pay writers more, so they will not embrace the **Clearinghouse** until they are forced to.

ATG: What can librarians do at this point to be heard on the issue of electronic rights and royalty payments?

JT: I would advise librarians to write letters to publishers and providers of information. Tell them they want the information that is contained in electronic databases and created by writers to be used, but they want it to be used legally and to be made available legally. Librarians can also advise them to do right by writers.

ATG: Any parting words of wisdom for our readers?

JT: Librarians and freelance writers are allies. They have similar interests and we should continue to find ways to work together. I hope we can do that. 🌱

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